Dato' Sukri bin Hj Mohamed v Wan Muhammad Azri bin Wan Deris

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO D-02(NCVC)(W)-783–05 OF 2014
ABDUL AZIZ ABDUL RAHIM, TENGKU MAIMUN AND ABANG ISKANDAR JJCA
8 MARCH 2016

Tort — Defamation — Libel — Allegation that blogger uploaded and published defamatory articles — Imputation that blogger abused powers — Whether appellant proved that respondent owner of blog — Trial judge rejected oral evidence of appellant's witnesses because evidence not supported by any documentary evidence — Whether identity of blogger proven — Whether impugned articles defamatory of appellant

There was a website or blog known as 'www.papagomo.blogspot.com' ('the said blog') and it was purportedly owned and administered by the respondent. The appellant contended that the respondent had uploaded and published three articles onto the blog defamatory of the appellant. At the material time, the appellant was an advocate and solicitor. The High Court held that the appellant had failed to prove that the respondent was the owner of the said blog; rejected the oral evidence of the appellant's witnesses because the evidence was not supported by any documentary evidence. The High Court found that the special officer ('SP1') to the appellant, had testified that there is no letter or certificate from any department to confirm that the respondent is the owner of the said blog. SP1 had made a police report but there was no evidence that SP1 had made any complaint or written report to the communication and multimedia commission or had written any letter to the commission to find out the identity of the owner of the said blog. The High Court judge also rejected the evidence by SP2 that the respondent did at one time admit to him that the respondent is *papagomo*. The appellant ('the plaintiff') had commenced an action in libel against the respondent ('the defendant') at the High Court based on three articles purportedly published by the respondent on his website/blog known as 'www.papagomo.blogspot.com'. After a full trial, the judge dismissed the action because the appellant failed to prove the identity of the blogger *papagomo*. The judge also held that the appellant failed to prove that the impugned articles were defamatory of him and that the defendant has succeeded in his defences. Hence, the present appeal.

Held, allowing the appeal with costs:

(1) The judge had misdirected himself on the law to reject the direct evidence of the oral testimonies of the witnesses that had clearly shown that they knew the respondent as a blogger who blogs using a pseudonym 'papagomo'. The judge gave no reason whatsoever as to why the oral evidence of the witnesses ought not to be believed except to say that the witnesses did not have any documentary evidence to support their claim that they knew the respondent. The judge completely ignored the provision of ss 59 and 60 of the Evidence Act 1950 ('Act 56'). Section 59 says all facts, except the contents of documents may be proved by oral evidence; and s 60 provides that oral evidence shall in all cases whatsoever be direct (see para 14).

(2) The judge did not critically examine or analyse the three articles in his written judgment. Instead the judge 'jumped' head-on into the defences by the respondent. In the first article the reference was so obvious to the appellant. Reading the article, the imputation was that the appellant had abused his position as a member of the Kelantan Civil Service Commission and also a member of Royal Council for the State of Kelantan ('Ahli Majlis Perajaan Negeri Kelantan') for his own personal or family benefit. Similarly, if one is to read the second and third articles together, one cannot miss the imputation that the appellant was a corrupt and untrustworthy person and who misused his office or position as advisor to Sultan of Kelantan (see para 18).

(3) The burden to prove justification, qualified privilege and fair comment was on the respondent. The respondent only called one witness which was himself to testify for the respondent. In his evidence the respondent merely denied having any knowledge of the impugned articles. The respondent produced documentary exhibits but failed to call the maker of the documents to prove its contents. the truth of the contents of a document must be established by the maker. In other words, the maker of the document must be called to testify to prove its contents. Non-compliance with this rule will result in the contents of the document being rendered as hearsay and therefore have little or no probative (see para 20).

(4) The burden to prove that the impugned articles or statements are true was on the defendant or in this case the respondent. The respondent failed to adduce cogent evidence to show that the contents of the three impugned articles were true. The respondent had not complied with the requirement of O 78 r 3(2) of the Rules of Court 2012 that a defendant to an action for libel or slander must give particulars stating which of the words complained of he alleges are statements of fact and of facts and matters he relies on in support of the allegation that the words are true (see para 21).

[Bahasa Malaysia summary

Terdapat lawan web atau blog dikenali sebagai 'www.papagomo.blogspot.com' ('blog tersebut') dan ia dikatakan dimiliki dan dilaksanakan oleh responden. Perayu berhujah bahawa responden telah memuat naik dan menerbitkan tiga artikel di blog tersebut yang berunsur fitnah terhadap perayu. Pada masa matan, perayu ialah seorang peguambela dan peguamcara. Mahkamah Tinggi memutuskan bahawa perayu telah gagal membuktikan responden adalah pemilik blog tersebut; menolak keterangan lisan saksi-saksi perayu kerana keterangan itu tidak disokong oleh apa-apa keterangan dokumentar. Mahkamah Tinggi mendapati pegawai khas ('SP1') kepada perayu, telah memberi keterangan bahawa tiada surat atau sijil daripada mana-mana jabatan untuk mengesahkan bahawa responden adalah pemilik blog tersebut. SP1 telah membuat laporan polis tetapi tiada keterangan yang SP1 telah membuat apa-apa aduan atau laporan bertulis kepada suruhanjaya komunikasi dan multimedia atau telah menulis apa-apa surat kepada suruhanjaya untuk mengetahui identiti pemilik blog tersebut. Hakim Mahkamah Tinggi juga telah menolak keterangan oleh SP2 bahawa responden telah pada satu masa mengakui kepadanya yang responden ialah *papagomo*. Perayu ('plaintif') telah memulakan tindakan untuk fitnah bertulis terhadap responden ('defendan') di Mahkamah Tinggi berdasarkan tiga artikel yang dikatakan telah diterbitkan oleh responden di laman web/blognya dikenali sebagai 'www.papagomo.blogspot.com'. Selepas perbicaraan penuh, hakim telah menolak tindakan itu kerana perayu gagal membuktikan identiti blogger *papagomo*. Hakim juga memutuskan perayu telah gagal membuktikan bahawa artikel-artikel yang dipersoalkan itu memfitnahnya dan bahawa defendan telah berjaya dalam pembelaannya. Justeru, rayuan ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Hakim telah salah arah dirinya tentang undang-undang untuk menolak keterangan langsung berhubung keterangan lisan saksi-saksi yang jelas menunjukkan bahawa mereka mengetahui responden sebagai blogger yang memblog menggunakan nama samaran 'papagomo'. Hakim tidak memberi sebab apa pun tentang kenapa keterangan lisan saksi-saksi tidak patut dipercayai kecuali menyatakan bahawa saksi-saksi itu tidak mempunyai apa-apa keterangan dokumentar untuk menyokong tuntutan mereka bahawa mereka mengetahui responden. Hakim langsung tidak menghiraukan peruntukan ss 59 dan 60 Akta Keterangan 1950 ('Akta 56'). Seksyen 59 menyatakan semua fakta, kecuali kandungan dokumen boleh membuktikan melalui keterangan lisan; dan s 60 memperuntukkan bahawa keterangan lisan hendaklah dalam semua keadaan secara langsung (lihat peranggan 14).

(2) Hakim tidak secara kritikal memeriksa atau menganalisi tiga artikel itu dalam penghakiman bertulis beliau. Sebaliknya hakim itu 'jumped' terus

kepada pembelaan oleh responden. Dalam artikel pertama rujukan begitu jelas kepada perayu. Dengan membaca artikel itu, pengataan adalah bahawa perayu telah menyalahgunakan kedudukannya sebagai ahli Suruhanjaya Perkhidmatan Awam Kelantan dan juga Ahli Majlis Perajaan Negeri Kelantan untuk kepentingan peribadi dan keluarganya. Begitu juga, jika seseorang membaca artikel-artikel kedua dan ketiga bersama, tidak boleh elak pengataan yang perayu itu seorang korup dan tidak boleh dipercayai dan telah menyalahgunakan jawatan atau kedudukannya sebagai penasihat Sultan Kelantan (lihat perenggan 18).

(3) Beban untuk membuktikan justifikasi, perlindungan bersyarat dan ulasan adil terletak pada responden. Responden hanya memanggil satu saksi iaitu dirinya untuk memberi keterangan bagi pihak responden. Dalam keterangannya responden hanya menafikan mempunyai apa-apa pengetahuan tentang artikel-artikel yang dipersoalkan. Responden telah mengemukakan ekshibit-ekshibit dokumentar tetapi gagal memanggil pembuat dokumen itu untuk membuktikan kandungannya. Kebenaran kandungan dokumen perlu dibuktikan oleh pembuatnya. Dalam erti kata lain, pembuat dokumen perlu dipanggil untuk memberi keterangan bagi membuktikan kandungannya. Ketidakpatuhan rukun ini akan mengakibatkan kandungan dokumen dianggap sebagai dengar cakap dan oleh itu tidak probatif (lihat perenggan 20).

(4) Beban untuk membuktikan artikel-artikel atau kenyataan-kenyataan yang dipersoalkan itu adalah benar terletak pada defendan atau dalam kes ini responden. Responden telah gagal mengemukakan keterangan meyakinkan untuk menunjukkan bahawa kandungan tiga artikel itu adalah benar. Responden tidak mematuhi keperluan A 78 k 3(2) Kaedah-Kaedah Mahkamah 2012 yang seorang defendan kepada suatu tindakan untuk fitnah bertulis atau fitnah lisan perlu memberikan butiran yang mengatakan perkataan-perkataan yang diadukan yang dikatakannya adalah kenyataan-kenyataan fakta dan tentang fakta dan perkara yang dia bergantung kepada untuk menyokong pengataan bahawa perkataan-perkataan itu adalah benar (liihat perenggan 21).]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (5th Ed, 2015) paras 575–793.

Cases referred to

Abdul Razak bin Mohd Noor v Wan Muhammad Azri bin Wan Deris (Writ Summons No 23NCVC-17–01 of 2012) (unreported), HC (not folld)

Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris [2014] 9 MLJ 605, HC (refd)

Allied Bank (Malaysia) Bhd v Yau Jiok Hua [1998] 6 MLJ 1, HC (refd)

Legislation referred to

Communication and Multimedia Act 1998
Evidence Act 1950 ss 59, 60
Rules of Court 2012 O 26, O 78 r 3(2)

Appeal from: Civil Suit No MT(1)23NCVC-03–02 of 2012 (High Court, Kota Bharu)

Hisham bin Fauzi (Hisham Fauzi & Assoc) for the appellant.
Respondent appeared in person.

Abdul Aziz Abdul Rahim JCA (delivering judgment of the court):

[1] The appellant (plaintiff in the High Court) had commenced an action in libel against the respondent (defendant in the High Court) at the High Court at Kota Bharu, Kelantan based on three articles purportedly published by the respondent on his website/blog known as 'www.papagomo.blogspot.com'. After a full trial, the learned judge dismissed the appellant's action principally on the ground that the appellant has failed to prove the identity of the blogger *papagomo*. The learned High Court judge also held that the appellant has failed to prove that the impugned articles were defamatory of him and that the defendant has succeeded in his defences.

[2] The appellant now appeals to us against that dismissal of his action with cost of RM10,000 to the respondent.

[3] We heard the appeal on 15 January 2015. Having heard counsel for the appellant and the respondent in person we unanimously allowed the appeal with cost of RM20,000 to the appellant as costs here and below. We also ordered the deposit to be refunded. The reasons for our decision are as follows.

BACKGROUND

[4] There was a website or blog known as 'www.papagomo.blogspot.com' ('the said blog') and it was purportedly owned and administered by the respondent. The appellant contended that the respondent had uploaded and published three articles onto the blog defamatory of the appellant. The three articles are:

(a) 'Ratusan ribu wang rakyat lesap disamun Penasihat Sultan Kelantan' dated 29 April 2011;

(b) 'Eksklusif — Wang komisen RM700 ribu hasil kayu balak Kelantan milik siapa?' dated 16 November 2011; and

(c) 'Tuanku Sultan Kelantan sembunyikan rahsia besar penyelewengan Penasihatnya' dated 24 November 2011.

[5] At the material time the appellant was (and still is) an advocate and solicitor of the High Court of Malaya. The appellant also sat as a member of the Kelantan Civil Service Commission and also a member of Royal Council for the State of Kelantan ('Ahli Majlis Perajaan Negeri Kelantan').

[6] Two main issues were canvassed before the High Court. The first issue is whether on balance of probability the respondent is the owner of the said blog and the second issue is whether the three impugned articles were defamatory of the appellant.

IDENTITY OF PAPAGOMO

[7] This is the first issue. The learned High Court judge held that the appellant had failed to prove that the respondent is the owner of the said blog. The High Court rejected the oral evidence of the appellant's witnesses because the evidence is not supported by any documentary evidence.

[8] The learned High Court found that SP1, the special officer to the appellant, had testified that there is no letter or certificate from any department to confirm that the respondent is the owner of the said blog. SP1 had made a police report but there is no evidence that SP1 had made any complaint or written report to the communication and multimedia commission or had written any letter to the commission to find out the identity of the owner of the said blog.

[9] The learned High Court judge also rejected the evidence by SP2 that the respondent did at one time admit to him that the respondent is *papagomo*. SP2 is the second cousin of the respondent. However the learned judge considered his evidence unacceptable because SP2 had admitted in his testimony that he did not know how to activate a computer to surf the said blog and that he only read the said blog if someone else had switched it on to read the articles.

[10] SP3 was the owner of a blog known as 'Prinsip Rakyat'. His evidence is that he had met the respondent quite a few times at the conventions of bloggers and the respondent admitted to him that he is *papagomo*. SP3 also said that he had met the respondent in Sarawak and had known the respondent through the respondent's photograph with SP3's wife loaded on to SP3's wife blog. However SP3 testified that he has no document or letter to prove that the respondent is the owner of the said blog.

[11] The director of the forensic legal department of the multimedia commission also gave evidence for the appellant as SP4. He testified that the commission monitors blogs and articles published through them; and would investigate any offence under the Communication and Multimedia Act 1998 relating to 'blog-blog lucah, jelek, mengancam dan sebagainya' when it received complaint from internet users. He also testified that the commission has data and information for each blog. However SP4 said that the commission has no information on the said blog *papagomo* or as to its owner.

[12] SP5 is another blogger who goes by the name 'Mat Saman Kati'. He also testified that the respondent is 'papagomo'.

[13] The learned judge rejected the testimonies of the above witnesses because they gave only oral evidence without any document to support their story. The learned judge was of the view that the best method to prove the identity of the owner of the said blog is by investigation, complaint, official search or by court order under O 26 of the Rules of Court 2012 by way of interrogatories. In para 15 of his judgment the learned judge wrote:

> [15] Keputusan mahkamah ini ke atas isu pertama ini mendapati bahawa plaintif gagal membuktikan secara sepatutnya mengikut cara yang terbaik iaitu membuat carian, aduan dan penyiasatan ataupun melalui suatu perintah mahkamah di bawah A 26 Kaedah-Kaedah Mahkamah 2012 iaitu interogatori agar pihak SKMM memberitahu siapakah pemilik blog Papagomo dan adakah defendan itu pemilik blog tersebut. Tiada keterangan yang menunjukkan sebarang langkah dibuat oleh plaintif untuk mendapatkan maklumat secara rasmi daripada pihak berotoriti. Apa yang dikemukakan adalah keterangan lisan SP2, SP3 dan SP5 yang mana sesiapa sahaja orang awam yang boleh jadi mengenali atau tidak mengenali Defendan boleh datang ke mahkamah ini dan mengakui defendan sebagai pemilik blog Papagomo.

[14] In our opinion the learned judge had misdirected himself on the law to reject the direct evidence of the oral testimonies of the witnesses that had clearly shown that they knew the respondent as a blogger who blogs using a pseudonym 'papagomo'. The learned judge gave no reason whatsoever as to why the oral evidence of the witnesses referred to above ought not to be believed except to say that the witnesses did not have any documentary evidence to support their claim that they knew the respondent. In our view it is reasonable to infer that in the world of bloggers it is highly probable that a blogger knows the other blogger next to him or her. This probability is real because blogs are circulated in virtual space and they are widely read. It is not something that is unusual or unthinkable that sometimes bloggers do engage in virtual debate or argument and respond to each other over issues which attract public interest such as corruption and misuse of power or position by public officials or public figures. The learned judge in our view had completely ignored the provision of ss 59 and 60 of the Evidence Act 1950 ('Act 56'). Section 59 says all facts, except the contents of documents may be proved by

oral evidence; and s 60 provides that oral evidence shall in all cases whatsoever be direct.

[15] The material fact that appellant need to prove in the first issue is whether the respondent was the blogger who blogs using the pseudonym 'papagomo'. In this respect the evidence of SP3 and SP5 had shown that this fact is true. Moreover in the case of *Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605, the same issue was canvassed and SP3 had also given evidence as SP1 in that case as to the identity of 'papagomo' which SP1 said, in his evidence, refers to the respondent in that case. The respondent in that case is the same respondent as in this case. The learned High Court there accepted SP1's evidence. In another case *Abdul Razak bin Mohd Noor v Wan Muhammad Azri bin Wan Deris* (Writ Summons No 23NCVC-17–01 of 2012, High Court Kuala Lumpur) (unreported), SP3 had also testified as plaintiff's witness SP1 as to the identity of the respondent as the blogger 'papagomo' and his evidence was also accepted by the court. Therefore in our opinion in this present appeal there is ample evidence for the court to conclude that the respondent is indeed the blogger 'papagomo'. But the learned judge decided to reject this evidence. We disagree with his decision.

WHETHER THE THREE ARTICLES WERE DEFAMATORY OF THE APPELLANT

[16] This is the second issue in the court below and in this appeal. The appellant has pleaded the three impugned articles in paras 5, 7 and 9 of the statement of claim. For ease of reference we re-produce the three articles below.

Paragraph 5

> Lepas satu maka satu lagi perkara timbul berhubung individu yang bernama Dato' Seri Paduka Haji Sukri Bin Mohamed Penasihat DYMM Sultan Muhammad ke V. Bukan baru beliau ini dinamakan dalam banyak isu malah difahamkan dalam isu kemelut Sultan Kelantan beliau juga turut terlibat.
>
> Berita baru yang diperolehi dari sumber maklumat sahih apabila beliau Haji Sukri telah dilaporkan menyalahguna kuasa dengan mengarahkan Pejabat Tanah dan Jajahan Pasir Puteh untuk menurap jalan Tar di atas tanah persendirian miliknya di Banggol Mak Esah Pasir Puteh Kelantan.
>
> Penurapan Tar di atas tanah miliknya ini digunakan bagi meraikan majlis persandingan anaknya pada 16 April 2011 yang lalu dengan menggunakan Dana WANG RAKYAT KELANTAN dari Pejabat Tanah dan Jajahan Pasir Puteh. Kos yang dianggarkan dalam penurapan jalan Tar tersebut di laporkan berjumlah RM200 ribu ringgit.
>
> Turut difahamkan juga sebahagian kos perbelanjaan dan peralatan bagi meraikan Majlis perkahwinan anaknya juga turut di biayai oleh Pejabat Tanah dan Jajahan Pasir Puteh Kelantan.

A Isu Penyalahgunaan kuasa ini di khabarkan sudah sampai ke pengetahuan Sultan Muhammad ke V dan rakyat Kelantan juga terutamanya di Pasir Puteh sedang hebah dengan apa yang berlaku di mana Wang Rakyat yang sepatutnya di gunakan dalam kebajikan mereka telah di salahguna oleh Penasihat Sultan.

Paragraph 7

B Di dalam dokumen di atas dinyatakan Tarikh dan jumlah Transaksi amaun Wang Tunai yang telah dimasukkan kedalam akaun seseorang individu yang amat berpengaruh di Kelantan. Individu ini dikatakan cukup hebat sampaikan tidak ramai yang boleh mengambil apa apa ke atas Individu tersebut

C ...

Hebat Individu yang berkuasa ini, boleh melakukan apa sahaja demi kerjaya politiknya. Siapa Individu tersebut? Gomo yakin sudah ada orang di Kota Bharu yang mengetahui Individu yang dimaksudkan itu.

D Keseluruhan Dokumen Komisyen yang berjumlah RM700 Ribu yang didedahkan ini akan dibongkar semuanya esok bagi menjelaskan kepada rakyat Kelantan hakikat yang berlaku selama ini.

Paragraph 9

E Jelas dan terbukti sekali lagi Titah Tuanku Sultan telah dicabul oleh Haji Sukri, wang yang sepatutnya dimasukkan ke dalam Akaun Yayasan Sultan Kelantan telah disonglap oleh Haji Sukri. Bayangkanlah bila wang Sultan pun boleh si Sukri ni rompak bagaimana dengan hal hal lain? Adakah Tuanku Sultan tidak berani untuk mengambil tindakan atas penyelewengan yang dilakukan Penasihat Sultan ini? Atau ada perkara lain yang menjadi rahsia besar?

F ...

Rakyat Kelantan menderita dengan pelbagai bagai masalah, hasil ekonomi Kelantan sepatutnya mampu memberikan pembangunan kepada Kelantan juga gagal dilaksanakan oleh Kerajaan PAS Kelantan. Sekarang ini penasihat Sultan pula yang berleluasa merompak wang yang sepatutnya untuk Sultan Kelantan G dalam membantu rakyat. Mengapa begini Kelantan negeri yang Melayu bangsanya dan Islam agamanya?

Untuk makluman semua Tuanku Sultan Muhammad ke V sudah mengetahui akan penyelewengan RM700 ribu ini yang disonglap oleh Haji Sukri Penasihat H Sultan. Namun sehingga kini Haji Sukri masih terus berkedudukan Penasihat Sultan tanpa dikenakan sebarang tindakan walaupun telah jelas penyelewengan Wang Yayasan Sultan Kelantan dilakukan beliau.

[17] These three articles were also tendered in evidence as exhs P1, P2 and P3 I respectively.

[18] The learned judge did not critically examine or analyse the three articles in his written judgment. Instead the learned judge 'jumped' head-on into the defences by the respondent. By inference therefore we think that the learned

judge was satisfied that the articles were defamatory and referred to the appellant. Having scrutinised the three articles we are of the same view. In the first article the reference is so obvious to the appellant. Reading the article, the imputation is that the appellant had abused his position as a member of the Kelantan Civil Service Commission and also a member of Royal Council for the State of Kelantan (Ahli Majlis Perajaan Negeri Kelantan) for his own personal or family benefit. Similarly, if one is to read the second and third articles together, one cannot miss the imputation that the appellant is a corrupt and untrustworthy person and who misuses his office or position as advisor to HRH the Sultan of Kelantan.

[19] However with regard to the defences of the respondent, we are of the view that the learned High Court judge had not given sufficient judicial consideration to the evidence. In fact we think, after reading the learned judge's judgment, His Lordship was quite certain that the respondent did not adduce any evidence to sustain his defences to the claim of making defamatory statement of the appellant. It appears that the learned judge took upon himself that the respondent had raised and proven the defences of qualified privilege, fair comment and justification. We are of this view when we read the following passage (para 27 of the judgment) in his written judgment:

> 27. Mahkamah ini memutuskan bahawa pembelaan defendan bahawa penulisan di dalam blog papagomo adalah sesuatu yang ianya sebagai perlindungan bersyarat (qualified privilege), asas komen (fair comment), justifikasi (justification), adalah berasas walaupun pihak defendan sendiri tidak menyentuh dalam keterangannya namun dari soal balas peguam defendan dan penelitian mahkamah fakta dan keterangan dari kes plaintif diakui sendiri oleh plaintif bahawa wang sejumlah yang terdapat di dalam blog papagomo dimasukkan oleh Hj Wan Md Mokhtar b Wan Ab Rahman melalui defendan pertama yang menyatakan bahawa beliau telah jelaskan melalui plaintif sebanyak RM700,000.

[20] The law is clear. The burden to prove justification, qualified privilege and fair comment is on the respondent. In the present case the respondent only called one witness that is himself to testify for the respondent. In his evidence the respondent merely denied having any knowledge of the impugned articles. The respondent produced documentary exhibits in D1 — a letter from Hj Wan Md Mokhtar bin Wan Abdul Rahman dated 25 September 2011 to prove the payment of RM700,000 to the appellant as commission for logging; D2 — a letter from Pejabat Perhutanan Negeri Kelantan and D3 — a chronology of payments to the appellants. However the respondent failed to call the maker of the documents to prove its contents. In *Allied Bank (Malaysia) Bhd v Yau Jiok Hua* [1998] 6 MLJ 1, it was said that it is settled law that the truth of the contents of a document must be established by the maker. In other words, the maker of the document must be called to testify to prove its contents. Non-compliance with this rule will result in the contents of the document being rendered as hearsay and therefore have little or no probative.

[21] It is an entrenched common law principle that falsity of a defamatory statement is presumed — *Gatley on Libel and Slander* (12th Ed, 2013) pp 395–396 and *Carter Ruck on Libel and Privacy* (6th Ed, 2011) at p 178. Therefore the burden to prove that the impugned articles or statements are true is on the defendant or in this case the respondent. In the instant appeal we are satisfied that the respondent has failed to adduce cogent evidence to show that the contents of the three impugned articles are true. Moreover O 78 r 3(2) of the ROC 2012 provides that a defendant to an action for libel or slander must give particulars stating which of the words complained of he alleges are statements of fact and of facts and matters he relies on in support of the allegation that the words are true. In the case before us, the respondent had not complied with the requirement of O 78 r 3(2) of the ROC 2012.

[22] Therefore we agree with the submission by learned counsel for the appellant that the respondent has failed in his defences to the claim of making defamatory statements of the appellant.

[23] Accordingly, we are unanimous that this appeal be allowed with costs to appellant. We also ordered that the case be remitted to the High Court at Kota Bharu for assessment of damages by the same trial judge. We so order.

Appeal allowed with costs.

Reported by Afiq Mohamad